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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

No. 44

LATHAM CASTLE, ATTORNEY GENERAL OF THE STATE OF ILLINOIS, AND BASIL WILSON, STATE'S ATTORNEY OF MARION COUNTY, ILLINOIS,

Petitioners,

vs.

HAYES FREIGHT LINES, INC.,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

REPLY BRIEF OF PETITIONERS.

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I.

The Enforcement Provisions of the Illinois Act Are Not in Conflict With or Superseded By the Federal Act.

Respondent has cited no authority to sustain the concept that Congress under the Federal Motor Carrier Act asserts any power over the State in its regulation and enforcement of weight limitations upon commercial vehicles. This Court has stated in *Welch Company* v. *New Hampshire*, 306 U. S. 79, 85:

"* * * In construing Federal statutes enacted

> under the power conferred by the commerce clause of the Constitution * * * it should never be held that Congress intends to supersede or suspend the exercise of the reserve powers of a state, even where it may be done, unless and except so far as *its purpose to do so is clearly manifested.*" (Emphasis supplied.)

Respondent attempts to fortify its argument that the State Act was superseded with a line of Motor Carrier Cases (Interstate Commerce Commission Motor Carrier Cases) dealing with the issuance and revocation of certificates of convenience and necessity. (Respondent's Brief, pp. 6-22.) Obviously such decisions are irrelevant and have no weight as judicial precedent. In connection with the citation of these cases, respondent also refers to the provisions of Section 212(a) (49 U. S. C. Sec. 312(a)) of the Interstate Commerce Act relating to the suspension and revocation of certificates. This section of the Federal Act and the questions of suspension of a Federal certificate for cause, are not here involved.

Respondent would persuade this Court that because of its own economic considerations, not here involved, and its interpretation of the national transportation policy that the sanction in question would "* * * vitiate the primary objectives of the certificate provisions of the Federal statute."[1] The lower court apparently followed this argument when it said,

> "* * * Congress has legislated in this field 'to

1. In support of such argument respondent and the court below cite precedents which apply the supersession rule under varying circumstances. These cases do not involve a regulation protecting the travelling public and governing the use and conservation of state highways. We comment briefly: *Savage* v. *Jones*, 225 U. S. 501, involved a state statute to prevent fraud in sale of food for domestic animals; it was sustained against the charge that it had been superseded by the Pure Food Act. *McDermott* v. *State of Wisconsin*, 228 U. S. 115, dealt with a state statute for labelling corn syrup which was held to be in conflict with Pure Food Act. In *Fry Roofing Co.* v. *Wood*, 344 U. S. 157, a state statute granting

> the end of developing, co-ordinating and preserving a national transportation system of water, highways, and rail, * * * adequate to meet the needs of the commerce of the United States * * *.' "

While it is true that Congress has legislated generally in the field of interstate motor transportation, neither its statement of the national policy nor the provisions of the Federal Act impair in any manner that portion of the regulatory power of the State here in question. Further, Congress said specifically that it is the policy of the Federal government "* * * to cooperate with the several states and the duly authorized officials thereof * * *."[2]

Respondent's construction, rather than promoting cooperation with the several states, is predicated upon freedom from effective state control.

We comment briefly upon respondent's endeavor to dis-

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certificate of convenience to an interstate motor carrier held not to be in conflict with the Federal Act. In *Western Union Telegraph Co.* v. *State of Kansas*, 216 U. S. 1, a state statute requiring payment of a fee by foreign corporation as a condition of doing business in state was held in violation of commerce clause. In *Cloverleaf Butter Co.* v. *Patterson*, 315 U. S. 148, a state statute preventing importation of renovated butter into state was held in conflict with Renovated Butter Act. In *Amalgamated Assoc. of Street, Electric Railway and Motor Coach Employees of America* v. *Wisconsin Employment Relations Board*, 340 U. S. 383, a state public utility anti-strike law was held in conflict with the National Labor Relations Act. Similarly, the lower court's citations are not applicable to the subject in question: *Western Union Telegraph Co.* v. *Massachusetts*, 125 U. S. 530, was concerned with a state statute prohibiting a corporation whose taxes were in arrears from carrying on business within the state. In *St. Louis Southwestern Railway Co.* v. *Arkansas*, 235 U. S. 350, a state franchise tax statute providing for forfeiture of a railroad's state franchise to do business in the state for failure to pay the tax was held a burden on commerce. In *Hill* v. *Florida*, 325 U. S. 538, a state statute licensing a union business agent was held in conflict with the National Labor Relations Act.

2. Note preceding Sec. 301, Title 49, U. S. C., full text printed in petitioner's brief, Appendix A, p. 59

tinguish the cogent authority of this court in *H. P. Welch Company* v. *New Hampshire*, 306 U. S. 79 (Respondent's brief, pp. 17-19, p. 34). This court states the issue in the *Welch* case specifically as follows at page 80:

> "* * * By this appeal, we are called on to decide whether, as applied in this case, * * * Sections 8 and 11 were *superseded* by the Federal Motor Carrier Act, 1935, Section 204, and regulations prescribed under it by the Interstate Commerce Commission." (Emphasis supplied.)

The Supreme Court of New Hampshire (*H. P. Welch Company* v. *State*, 89 N. H. 428, 199 Atl. 886) states the issue specifically as follows:

> "The company's next contention is to the effect that the state statute has been superseded by the Federal Motor Carrier Act, 1935 * * *."

This precise issue is now before the court. The *Welch* case is direct authority upon this issue as cited in our brief point III (Pet.'s brief, pp. 14-17).

Respondent's erroneous contention that interstate commerce was not involved under the issue in the *Welch* case is answered succinctly by this court at pages 81-82:

> "Appellant is a Massachusetts corporation doing intrastate and interstate business as a common and contract carrier of freight for hire by motor vehicles over public highways in that State and in New Hampshire. Approximately 99% of its business is interstate. * * * After notice and hearing, the Commission, * * * held appellant had violated the provisions of Section 8 and ordered that its certificates be suspended for five days. Appellant appealed to the State Supreme Court. That court upheld the challenged provisions and dismissed the appeal * * *."[3]

3. The New Hampshire court said: "Upon the authority of the cases last cited we hold that it was not the intention of Congress to enter the field of regulation of hours of service of truck drivers *engaged in interstate commerce* until the effective date of the

In resolving the issue in favor of the State in the *Welch* case, the following is a further answer by this court to the respondent (pp. 84-85):

> "* * * Our decisions provide no formula for discovering implied effect of federal statutes upon state measures such as that under consideration. * * *
>
> "The roads belong to the state. There is need of local supervision of operation of motor vehicles to prevent collisions, to safeguard pedestrians and the like. Unquestionably, reasonable regulation of periods of continuous driving is an appropriate measure. In view of the efforts of governmental authorities everywhere to mitigate the destruction of life, limb and property, resulting from the use of motor vehicles, it cannot be inferred that Congress intended to supersede any state safety measure prior to the taking effect of a federal measure found suitable to put in its place. Its purpose to displace the local law must be definitely expressed. * * *"

Notwithstanding the plain meaning of the *Welch* case and its direct application upon the issue here, respondent would have this court infer that Congress intended to supersede the reasonable enforcement provision. Such inference is unwarranted.

II

The Federal Certificate of Convenience and Necessity Is Not a Grant of the Right to Use the Highways of Illinois for the Conduct of Business.

Respondent's argument (and that portion of the lower court's decision here in question) is premised upon the proposition that under a certificate of convenience and

Interstate Commerce Commission's rulings upon the subject. * * * The violations of the state act charged against the company occurred before either of those dates and so at a time when the state act was in full force and effect." (Emphasis supplied.) (89 N. H. 428, 159 Atl. 886.)

necessity issued by the Interstate Commerce Commission, respondent has an absolute right to conduct its business upon the highways of the State of Illinois. Such premise is contrary to the fundamental character of the certificate. The issuance of such a certificate is permissive and without it, respondent cannot engage in interstate commerce as a common carrier by motor vehicle.[4] The Act does not provide or imply that one who receives such a certificate shall be entitled to the use of the public highways of a particular state. As we have previously pointed out, Congress specifically provided that a certificate issued pursuant to the Act does not convey "any proprietary right in the use of the public highways * * *."[5]

Respondent and the lower court concede the power of the State to regulate the size and weight of commercial vehicles under the authority of the *Barnwell*[6] and *Maurer*[7]

4. Sec. 306 of the Federal Act (Part II Interstate Commerce Act, 49 U. S. C. Sec. 306) sets forth the requirement for a *certificate* of convenience and necessity for a common carrier engaged in interstate commerce. Sec. 309 of the Act provides for a *permit* to be issued to a contract carrier engaged in interstate commerce. Private carriers engaged in interstate commerce are not subject to any "certificate" or "permit" under the Federal Act. The power and duty of the Interstate Commerce Commission to regulate each *kind* of carrier is provided in Sec. 304. The common carrier is regulated as to service, records, qualifications and hours of service of employees and safety of operation and equipment. The contract carrier is regulated as to records, qualifications and hours of service of employees and safety of operation and equipment. The private carrier, if need is found, may be regulated only as to requirements to promote safety of operation and to that end, prescribe qualifications and hours of service of employees and standards of equipment. The respondent's certification argument falls of its own weight when applied to the interstate *contract* carrier or *private* carrier who, also under the present decision, are excluded from the operation of the enforcement provision.

5. 49 U. S. C. Sec. 307(b).

6. *South Carolina Highway Dept.* v. *Barnwell Bros.*, 303 U. S. 177.

7. *Maurer* v. *Hamilton*, 309 U. S. 598.

cases. However, the logic of these decisions is studiously avoided by respondent in drawing a fine line between the State's power to regulate and the power to enforce such regulations.[8] Respondent here, as did the interstate truckers in the *Barnwell* case, asserts that the State Act was superseded by the Federal Act and is invalid, as a burden upon interstate commerce when applied to interstate operations.

It is settled that the Federal Motor Carrier Act does not supersede the power of the state to regulate size and weight and the question, therefore, is simply one of the reasonableness of the enforcement provision.

If the decision of the Supreme Court of Illinois is sustained, Illinois may enforce a statute valid in all respects but may not enforce it against interstate carriers. The lower court in the *Barnwell* case, held, as the Illinois Court has held in this case, that the sanction in question was constitutional as to due process but placed an unlawful burden upon interstate commerce. The effect of the lower court's decision in each case is identical. In the *Barnwell* case, this court reversed the lower court and said:[9]

> "The trial court rested its decision that the statute unreasonably burdens interstate commerce, upon findings, not assailed here, * * * and upon its conclusion

8. Respondent admits that the State may inflict "the usual civil or criminal penalties including fine or imprisonment * * *." (Respondent's Brief, p. 23.) However, respondent does not nor could it demonstrate that the enforcement provisions are unreasonable, or, if applied uniformly to both intrastate and interstate commerce, a denial of due process. Further, respondent is not in a position to quarrel with the state legislative choice of the sanction. In dismissing respondent's appeal for want of a substantial Federal question, this court has upheld the validity of the provisions in question as against the contention they are unreasonable or invidiously discriminatory in the denial of due process (*Hayes* v. *Castle, et al.*, 347 U. S. 904, 74 S. Ct. 866) and in this respect affirmed the court below. (Rec. pp. 53-58; *Hayes* v. *Castle*, 2 Ill. 2d 58, 63-69.)

9. *South Carolina Highway Dept.* v. *Barnwell Bros.*, 303 U. S. 177, 182, 184.

that, when viewed in the light of their effect upon interstate commerce, these restrictions are unreasonable • • •

"In reaching these conclusions, and at the same time holding that the weight and width limitations do not infringe the Fourteenth Amendment, *the court proceeded upon the assumption that the commerce clause imposes upon state regulations to secure the safe and economical use of highways a standard of reasonableness which is more exacting when applied to the interstate traffic than that required by the Fourteenth Amendment as to all traffic;* that a standard of weight and width of motor vehicles which is an appropriate state regulation when applied to intrastate traffic may be prohibited because of its effect on interstate commerce, although the conditions attending the two classes of traffic with respect to safety and protection of the highways are the same." (Emphasis supplied.)

After discussing the nature and source of the State's power concerning the use of its highways and in sustaining the sanction both as to due process and the commerce clause, the court then said on page 189:

"This court has often sustained the exercise of that power, although it has *burdened* or *impeded* interstate commerce." (Emphasis ours.)

Assuming, without determining that Congress could regulate the size and weight of vehicles upon the highways under the commerce clause, admittedly Congress is not so acting. The answer to the assumption that the commerce clause employs a different standard than the Fourteenth Amendment is again found within the *Barnwell*[10] case. The court said at page 190:

"• • • the judicial function under the commerce clause, as well as the Fourteenth Amendment, stops

[10] *South Carolina Highway Dept. v. Barnwell Bros.*, 303 U. S. 177, 190.

> with the inquiry whether the state legislature in adopting regulations such as the present has acted within its province and whether the means of regulation chosen are reasonably adapted to the end sought."

Applying the test of the *Barnwell* case, that the regulation of weight is within the power of Illinois, the means of regulation is reasonably adapted to the end sought.[11]

III.

The Illinois Regulation Is a Valid Exercise of the State's Exclusive Power Over Its Highways.

1. Under part II of its brief,[12] respondent attempts to inject within the framework of the case the suggestion that Illinois regulates interstate commerce as such. It said: "The question here is simply what conditions and what forfeitures Illinois may constitutionally place upon interstate motor carriers using its highways in the light of the fact it has voluntarily opened such highways to interstate motor traffic."[13]

The short answer is that the Illinois statute imposes the same condition upon interstate carriers as upon intrastate carriers; i. e., compliance with regulations relating to size and weight of vehicles. The "forfeiture" to be exacted from interstate motor carriers is that to be exacted from intrastate carriers; i. e., when a carrier habitually violates Illinois regulations as to weight, its privilege to use the highways as a place of business is suspended.

11. "The State's continuing search for effective enforcement techniques to secure compliance with valid weight limits is apparent in the legislation dealing with the subject. * * * The General Assembly might infer that the truckers find the payment of statutory penalties when violation is established to be economically preferable to compliance." (*Hayes Freight Lines, Inc.* v. *Castle*, 2 Ill. 2d 58, 68-69; Rec. p. 58.)

12. Respondent's Brief, pp. 31-36.

13. Respondent's Brief, pp. 32-33.

It is interesting that American Truck Associations, Inc., cites from the opinion of this court in *Buck* v. *Kuykendall*, 267 U. S. 307.[14] The language therein cited, purportedly to demonstrate that the Illinois statute is unlawful, fails in its purpose. Rather it strikingly demonstrates the difference between the action proscribed by this court and the Illinois legislation. In *Buck* v. *Kuykendall*, this court said of the Washington statute:

> "Its primary purpose is not regulation with a view to safety or to conservation of the highways, but the prohibition of competition."

The Illinois statute is an enactment "with a view to safety" and "to conservation of the highway." It is not "directed at competition."

Counsel have further quoted: "It (the Washington statute) determines not the manner of use, but the persons by whom the highways may be used." The Illinois statute "determines the manner of use" only in that the motor carrier improperly loads at the risk of losing the privilege of conducting a business on the state highway. The Illinois Act is directed at "persons by whom the highways may be used" only in that it is directed at those who habitually violate lawful regulations as to weight when using the highways.

Again quoting from this court in the *Buck* case, counsel said, "Moreover, it (the Washington statute) determines whether the prohibition shall be applied by resort, through state officials, to a test which is peculiarly within the province of the Federal action—the existence of adequate facilities for conducting interstate commerce."

If we apply the argument of *amicus*, the American Trucking Associations, Inc., to the assertion of respondent,

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14 Brief of American Truck Associations, Inc., *amicus curiae*, p. 13

it is clear that the Illinois statute sedulously avoids any attempt at invading the purview of the Federal regulation, namely, authorizing or limiting carriers in interstate commerce except suspension of the right to operate in Illinois as an incident to such suspension limits the right to compete to those who obey the law.

It is urged by counsel for *amicus*, American Trucking Associations, Inc. (Br. p. 16), that a state could not preclude a railroad from crossing its highway as an incident to its police power or other power to regulate its highways and cite the opinion of this court in the case of *Atchison, T. & S. F. Ry. Co.* v. *P. U. C.*, 346 U. S. 355, 74 S. Ct. 72, 97. The cited case demonstrates the power of the state to compel a railroad to remove its tracks from a highway: to separate a crossing of a highway and a railroad by a viaduct or by a subway is to remove the railroad from the highway. As Mr. Justice Minton pointed out "the fact that the improvements may interfere with interstate commerce is incidental. The construction and use of public streets is a matter peculiarly of local concern and great leeway is allowed local authorities *where there is no conflicting regulation, even though interstate commerce be subject to material interference.*" (Emphasis supplied.)

Conclusion

The State of Illinois can legislate as to size and weight of motor carriers; and it may also provide for the reasonable enforcement of such legislation. The sanction of suspension is reasonable. It is to be applied uniformly and without discrimination. The decision below should be reversed, and the statute challenged held constitutional.

Respectfully submitted,

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